

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

- - - - - X  
UNITED STATES OF AMERICA, 18-CR-6094  
Plaintiff

Vs.  
XAVIER TORRES Defendant Rochester, New York  
May 19, 2022  
10:00 a.m.

- - - - - X

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE FRANK P. GERACI, JR.  
UNITED STATES DISTRICT JUDGE

U.S. ATTORNEY'S OFFICE  
BY: ROBERT MARANGOLA, ESQ.  
100 State Street  
Rochester, New York 14614  
Appearing on behalf of the Plaintiff

MAURICE J. VERRILLO ESQ.  
3300 Monroe Avenue  
Suite 301  
Rochester, New York 14618  
Appearing on behalf of the Defendant

COURTROOM DEPUTY: Stephen Ryck

COURT REPORTER: Brandi A. Wilkins  
scalisba@gmail.com  
Kenneth B. Keating Federal Building  
100 State Street, Room 2120  
Rochester, New York 14614

1           THE CLERK: This is 18-CR-6094, USA versus  
2           Xavier Torres. Rob Marangola is here for the  
3           Government. Maurice Verrillo for Mr. Torres and  
4           Jennifer Fish from probation. You may be seated.  
5           This matter is on for sentencing.

6           THE COURT: Are you Xavier Torres?

7           MR. TORRES: Yes, Your Honor.

8           THE COURT: This matter is on for  
9           sentencing. There are a number of matters the Court  
10          needs to address before we get to the sentencing  
11          matter. First of all, the defense did request certain  
12          mental health records from various correctional  
13          facilities.

14          The Court did take the opportunity to review  
15          those records in camera, determined that most of those  
16          should not be disclosed to the defendant in that they  
17          did not impact the determination in the hearing that  
18          we had with the exception of records from Allegheny  
19          Correctional Facility. The Court did disclose those  
20          two the defense counsel based upon the fact there's  
21          some indication regarding memory issues of Mr. Nunez.

22          Subsequent to that, the Court did receive  
23          memorandums from both the defense and the Government  
24          related to that hearing. Regarding the mental health  
25          records, the Court did not find anything in there that

1 would cause concern regarding memory issues of the  
2 witness. In fact, there were a number of  
3 inconsistencies in the records, some reported memory  
4 issues, but there was no diagnosis of any short term  
5 or long term memory issues that would give the Court  
6 reason for pause or concern. Did you want to be heard  
7 anymore than that, Mr. Verrillo?

8 MR. VERRILLO: I do want to be heard on the  
9 Government's response to my summation, but I don't  
10 know if we're there yet. So I think the Court has  
11 submissions on mental health issue.

12 THE COURT: Okay. The second thing I want  
13 to address again just to make clear for the record the  
14 defense did make motions under Rule 29, a motion for a  
15 judgment of acquittal. The Court denied that at the  
16 trial and subsequent in the post verdict motions based  
17 upon the fact that the evidence that was presented to  
18 the jury was sufficient for the verdict that was  
19 returned by the jury and that there are issues of fact  
20 for the jury to determine, particularly the  
21 credibility of the witnesses who testified in this  
22 case, and therefore, I want to reiterate that the  
23 motion under Rule 29 for motion for judgment of  
24 acquittal is denied.

25 There's also a motion under Rule 33 for new

1 trial on a number of grounds including reiteration  
2 that the motion denying suppression of certain  
3 statements by the defendant should be reexamined by  
4 the Court. The Court determined that there was no  
5 reason to reexamine that determination and that is a  
6 basis for the motion for a new trial was denied as  
7 well. In addition, there was a motion for a new trial  
8 based upon the defensive argument that the Court  
9 errored in charging the jury in particular in  
10 providing Pinkerton charge to the jury, and once  
11 again, the Court has previously denied that motion and  
12 continues to deny that motion.

13 The third issue is the murder cross  
14 reference pursuant to guideline 2D1.1D. The Court did  
15 conduct a hearing regarding that particular matter.  
16 The Court has received submissions from both the  
17 defense and the Government related to that. Did you  
18 want to be heard on that, Mr. Verrillo?

19 MR. VERRILLO: Yes, Judge. I extensively  
20 discussed Mr. Nunez. I'm not going to repeat that. I  
21 just want to point out that the Government had  
22 requested the hearing, sentencing hearing first of  
23 all, and next that Mr. Standish has no personal  
24 knowledge of what happened on June 6, 2016. I had  
25 pointed out during cross examination that he gave

1 sworn testimony to a Buffalo City Court judge which  
2 was inconsistent with his testimony in court including  
3 he indicated there his last contact was June 4, 2016.  
4 When he testified before the Buffalo City Court Judge  
5 that was on June 8, 2016, he did not say he knew of a  
6 shooting or he saw any article of a shooting.

7 Mr. Standish doesn't provide independent  
8 corroboration of any of Nunez's claims. Also, even if  
9 it was true that there was this meeting or get  
10 together where he was shown an article, that doesn't  
11 prove anything as far as we're concerned. The  
12 testimony of Robert Figueroa and others about the  
13 events of the shooting which they were not present at  
14 are also inconsistent with Nunez including who drove  
15 Flacco to Buffalo. So I just wanted to make those  
16 points in addition to what we've already raised in our  
17 papers.

18 THE COURT: Thank you. Mr. Marangola.

19 MR. MARANGOLA: Judge, the testimony of Mr.  
20 Standish with regard to the defendant showing him that  
21 article was never impeached. He was not asked about  
22 any murder -- or article and when he was asked about  
23 the murder he testified about the article that he was  
24 shown. He was shown that by the defendant unrelated  
25 to the specific murder that Mr. Nunez testified the

1 defendant orchestrated and he was never impeached  
2 about that point. Not only did he show him that  
3 article but he made the comment that the person was  
4 begging for his life and that he had fucked with the  
5 wrong people, excuse my language. I believe that was  
6 the comment he had made indicating that he had some  
7 knowledge other than just simply having read it in the  
8 local news.

9 And finally, with respect to the fact that  
10 he pointed out to that the Government requested the  
11 sentencing hearing, Judge, the Government merely  
12 sought since he objected to that application the  
13 application of the murder reference guideline to round  
14 out the record on that particular point. So if he had  
15 not objected to it, we wouldn't have asked for a  
16 hearing, but he nonetheless objected, felt it  
17 appropriate that the court have additional information  
18 to make his fact finding on that issue. Thank you.

19 THE COURT: Thank you.

20 MR. VERRILLO: Judge, one other thing if I  
21 could.

22 THE COURT: Sure.

23 MR. VERRILLO: Mr. Nunez when he testified  
24 testified about what he did and there was no mention  
25 about Mr. Gonzalez begging for his life. So I just

1 want to state that. There was no mention of that in  
2 his direct testimony. So other people have claimed  
3 that, but the witness who says he was there did not  
4 testify to that.

5 THE COURT: Thank you. Regarding the cross  
6 reference under guideline 2D1.1, the Court did conduct  
7 the hearing at the request of the Government. Victor  
8 Nunez did testify that he had entered into a  
9 cooperation agreement with the Government. He had  
10 pled guilty to conspiracy to possess with intent to  
11 distribute heroin. His guideline sentencing range 290  
12 to 365 months.

13 Mr. Nunez did admit involvement in two  
14 homicides, one of Mr. Garcia on January 20 of 2016  
15 which was conducted with Odell Torres, that that  
16 actually involved murder of the wrong individual and  
17 murder of the brother of the target, and then on June  
18 6 of 2016 did travel to Buffalo, New York, with the  
19 defendant Xavier Torres and murdered Jonathan  
20 Gonzalez. Both of those murders were directed by  
21 Carlos Javier Figueroa.

22 The testimony from Mr. Nunez indicated that  
23 he had been involved in the sale of heroin since a  
24 young age, sold drugs on Burbank Street for Carlos  
25 Figueroa, and Jonathan Gonzalez, the victim of the

1 homicide in Buffalo, sold and packaged the drugs as  
2 well for Mr. Figueroa. That he was directed to kill  
3 Jonathan Gonzalez because he had sold drugs that did  
4 not come from the Figueroa organization, that he did  
5 receive the guns involved in that homicide from 699  
6 Main Street which was the possession -- one of the  
7 locations of the drug trafficking network distribution  
8 centers.

9 Mr. Nunez did admit on the stand that he had  
10 some mental health issues, was however never treated  
11 for those, that he used heroin and marijuana on a  
12 daily basis at some time, that he ODeD on heroin at  
13 one point in 2015, that he was in a motor vehicle --  
14 motorcycle accident that did not result in any brain  
15 injury, that he had no problems with memory. He did  
16 indicate some hallucinations at some point. It was  
17 unclear whether or not those were related to some type  
18 of injury or medications that he was taking, did  
19 indicate that he had suffered from issues of  
20 depression based upon the -- in particular the charges  
21 that were placed against him.

22 Mr. Nunez did admit quite frankly that he  
23 was not truthful to investigators during proffer  
24 sessions, that he was not truthful during his  
25 testimony before the Grand Jury and at other times.



1       However, based upon the testimony of Mr. Nunez and in  
2       concert with the corroboration of some of the  
3       testimony that occurred at trial, the Court finds that  
4       Victor Nunez was in fact a credible witness regarding  
5       the involvement in the murder of Jonathan Gonzalez and  
6       therefore that the cross reference to murder under  
7       guideline 2D1.1 will apply as to the defendant Xavier  
8       Torres.

9               The Court is aware of the testimony of Louis  
10       Rosario who seemed to conflict with some of the  
11       testimony regarding his presence in Buffalo, the use  
12       of other matters. The Court does not find any of  
13       those that testimony convincing to dispute the  
14       testimony of Victor Nunez. In addition, his testimony  
15       at the trial from the witness, Standish was a previous  
16       Department of Corrections officer testified regarding  
17       his involvement in this drug conspiracy as a customer  
18       and also the testimony of Roberto Figueroa that  
19       corroborated the testimony of Victor Nunez. Therefore  
20       the Court finds that there is evidence by  
21       preponderance of the evidence to support the cross  
22       reference to murder under guideline 2D1.1.

23               The next issue the Court wants to deal with  
24       are the numerous objections that have been raised by  
25       the defense. Do you want to be heard on that?

1           MR. VERRILLO: Judge, I think my papers are  
2 sufficient.

3           THE COURT: Mr. Marangola, anything further  
4 on that?

5           MR. MARANGOLA: No. Thank you, Judge.

6           THE COURT: Okay. There are a number of  
7 objections filed by the defense to the presentence  
8 report. First one was an objection to the use of  
9 various aliases for which the defendant was known  
10 including Pistolita, Peewee, P and Pepe. There was  
11 testimony from a number of different witnesses at the  
12 trial that did corroborate the use of those particular  
13 aliases by Mr. Torres. Peewee apparently was referred  
14 to in 2009 presentence prepared by the United States  
15 Probation Department.

16           Xavier Torres was another name used by the  
17 defendant that was listed as an alias on one of a  
18 previous criminal wrap sheets. P and Pepe were names  
19 that were used by the defendant, Mr. Torres. That was  
20 articulated by confidential informant information as  
21 well. In any event, the use of the aliases and the --  
22 by the defendant in no way impacts the guideline range  
23 and therefore that objection is overruled.

24           The defense did object to Paragraphs 35 and  
25 36 regarding the factual summary in this case, and

1 again, that was based upon previous reports and  
2 testimony that was supported and therefore that  
3 objection's also overruled and again that has no  
4 impact on the ultimate guideline determination.

5 The defense objected to Paragraphs 39, 40,  
6 41, 42, 43, 44, 45, 48, 49, 50, 54, 58 and 59 which  
7 all refer to activities by co-defendants. The  
8 defendant was charged and convicted of a conspiracy in  
9 this case. Therefore the acts of all the could  
10 conspirators were relevant information for the  
11 probation department to provide to the Court for its  
12 consideration. The co-defendants all had different  
13 roles as often occurs in conspiracies and worked  
14 together to accomplish the goals of the conspiracy,  
15 and therefore, the objection to those paragraphs is  
16 also denied.

17 The defense objects to Paragraphs 46, 47, 55  
18 and 56 claiming that he never used the nickname P.  
19 Again, discovery indicates otherwise, and again, that  
20 has no impact on the guideline range so that objection  
21 is also overruled. The defense objects to Paragraphs  
22 51, 52 and 53 regarding a red Honda that was involved  
23 in this conspiracy. The defendant stated that he  
24 walked there, did not utilize this particular vehicle;  
25 however, the testimony conflicts with that.

1       Ultimately, the defendant was arrested and did  
2       indicate that he had on him heroin -- or excuse me, a  
3       Honda he had on him heroin, the cocaine packaging  
4       materials and marijuana, and again, to reference that  
5       particular red Honda has no impact on the guideline  
6       range and therefore that objection is also overruled.

7               The defendant objects to Paragraphs 60, 61,  
8       62, 63 and 67 regarding the murders of Luis Garcia  
9       Pizarro, Walter Russ, Caesar Lopez. Luis Garcia  
10      Pizarro was killed on January 20 of 2016 by Victor  
11      Nunez and Obed Torres Garcia. As previously  
12      indicated, Mr. Luis Garcia was killed in error. It  
13      was supposed to be the brother that was killed in that  
14      particular case.

15             Walter Ross was killed by Jonathan Cruz  
16      Carmona during the course of this conspiracy, and the  
17      testimony indicates that Xavier Torres killed Cesar  
18      Antonio Lopez through the testimony of Roberto  
19      Figueroa and as previously indicated as well Jonathan  
20      Gonzalez. This was all a conspiracy and the homicides  
21      during the course of conspiracy in furtherance of the  
22      conspiracy are acts that can be considered against all  
23      the co-conspirators, and therefore, that objection is  
24      also overruled.

25             The defense objects to Paragraphs 64 and 66

1 challenging again the murder -- reference to the  
2 murder of Jonathan Gonzalez or Flacco. Once again,  
3 based upon the testimony of Mr. Nunez, Mr. Gonzalez  
4 was shot by him on June 6 of 2016, shot nine times in  
5 the head, back, shoulder, buttocks and also appears he  
6 was shot in the finger when he attempted to defend  
7 himself as well. Mr. Nunez did plead guilty and  
8 admitted that particular murder and also testified at  
9 the hearing before this Court regarding the murder  
10 cross reference pursuant to guideline 2D1.1.  
11 Therefore, that objection's also overruled.

12 The defendant objects to Paragraphs 68, 69,  
13 70, 71, 72 and 73 regarding alleged statements made by  
14 the defendant, Xavier Torres, to law enforcement;  
15 specifically a statement alleged that the defendant  
16 made -- that Carlos Javier Figueroa was trying to have  
17 him murdered. The defendant does now deny that  
18 particular statement; however, there is evidence in  
19 the record regarding the underlying criminal complaint  
20 and other documents that support that alleged  
21 statement of the defendant, Torres, and therefore,  
22 that objection is also overruled.

23 The defendant objects to Paragraphs 74, 75,  
24 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88,  
25 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99. All

1 those references by the probation department in its  
2 summary to the Court is information that is derived  
3 from trial testimony oftenly quoted direct testimony  
4 from the particular witness. The jury did examine all  
5 this testimony, ultimately found the defendant guilty  
6 beyond a reasonable doubt. Therefore, the objection  
7 to those paragraphs 74 through and including 99 is  
8 also denied.

9 Defendant objects to Paragraphs 104, 105 and  
10 106 which is simply a summary of the information  
11 provided to the Court. Based upon the prior rulings,  
12 that objection is also overruled. The defendant  
13 objects to the guidelines Paragraphs 112, 117, 120,  
14 144 and 145 objects specifically to the determination  
15 that the base offense level's 43. Based upon the  
16 applicability of guideline 2 D 1.1D1 that indicates if  
17 a victim is killed under circumstances constituting  
18 murder that that should be considered.

19 As I stated a number of times now on June 6  
20 of 2016, Flacco or Jonathan Gonzalez was killed by  
21 Victor Nunez, shot nine times at the direction of the  
22 major player of this conspiracy Carlos Javier  
23 Figueroa. That homicide was committed during and in  
24 furtherance of the conspiracy. There's clearly proof  
25 by a preponderance of the evidence that the defendant

1 and Nunez lured Jonathan Gonzalez to Buffalo with the  
2 intent to kill him, and therefore, the appropriate  
3 base level pursuant to 2A1.1A is Level 43 and that is  
4 the appropriate guideline base level. The objection  
5 is also overruled. Anything further on the  
6 objections?

7 MR. VERRILLO: Judge, I did include with my  
8 summary testimony from Axel Camacho on the Gargolo  
9 shooting which she referred to Dommy being involved in  
10 the shooting. So I just wanted to note that I did  
11 attach that to my original statement of sentencing  
12 objections.

13 THE COURT: Okay. Yes. I'll read note of  
14 it and it's part of the record. Anything further, Mr.  
15 Marangola?

16 MR. MARANGOLA: No. Thank you, Your Honor.

17 THE COURT: Okay. With those rulings, I  
18 believe we're ready to proceed. The Government have a  
19 statement to make?

20 MR. MARANGOLA: Yes. Thank you, Judge.  
21 Your Honor, I'll be brief. The Court sat through two  
22 trials in which a tremendous amount of detail was put  
23 forth describing this organization. The defendant,  
24 Xavier Torres, he was a participant in this large  
25 scale cocaine and heroin trafficking operation. They

1       used fear, intimidation, guns and violence to succeed.  
2       They did that to sell a lot of drugs, and this  
3       defendant's role was one of those violent enforcers  
4       that allow and enable these drug trafficking  
5       organizations to succeed. And his violence went to  
6       the highest level and included murder.

7               This defendant is a former Latin King  
8       member. He's been to federal prison already for  
9       heroin trafficking and he returned to that same  
10      activity. I would ask that the sentence that the  
11      Court imposes gives justice to the people in that  
12      Burbank Street area who were victims and held hostage  
13      in that community while these men poisoned this  
14      community.

15             It gives justice to the victims who ingested  
16      that poison themselves and finally to John Gonzalez  
17      and his family for the defendant's involvement in  
18      orchestrating and perpetuating murder in general and  
19      specifically the murder of John Gonzalez on June 6,  
20      2016. Unless the Court has any questions for me, I  
21      thank you.

22             THE COURT: Thank you, Mr. Marangola. Mr.  
23      Verrillo?

24             MR. VERRILLO: Judge, Mr. Torres, Xavier  
25      Torres is 37 years old. He has three children and he



1       also has one grandchild. We had submitted some  
2       letters from the daughter, the niece and the sister  
3       which talk about their relationship and what he has  
4       represented to them, the significance of that.

5               His history included being raised by his  
6       mother primarily with limited contact with his father.  
7       He primarily resided in Buffalo. He did live in the  
8       area for a period of time. We would submit he return  
9       to Buffalo in November of 2015. He has a history of  
10      drug usage which he would obviously benefit from some  
11      substance abuse counseling.

12             The issue of sentencing as the Court knows  
13      is up to its discretion, has full power, has the  
14      guidelines are advisory. I did want to cite the cross  
15      reference of US versus Cordoba-Murgas 233 F.3D 704  
16      Second Circuit 2000 when you have a case where there's  
17      a substantial increase obviously from the guidelines.  
18      It was just a drug issue to this enhancement. I think  
19      it's a nine point -- nine level difference and I'd ask  
20      the Court to consider the significance of that.

21             It's our position, continues to be that  
22      there were substantial doubts as to the Government's  
23      case related to the Gonzalez matter because of the  
24      issues we've raised about Nunez, but the Court has  
25      discretion regardless as to how it will sentence, and

1 the history that Mr. Torres has as I understand it the  
2 criminal convictions did not involve any prior claims  
3 of shooting or prior violent crimes.

4 A life sentence is very harsh and I know the  
5 Court has the power to do that. It's a very harsh  
6 sentence, and Mr. Torres during this whole proceeding  
7 has been respectful of the Court and has not been a  
8 problem in the Court. I want the Court to note that.  
9 The minimum sentences that are available are  
10 significant.

11 I'd ask the Court to consider that for both  
12 counts and I'd ask the Court to recommend substance  
13 abuse programs for Mr. Torres. I'd also ask that he  
14 be placed as close to Lancaster, Pennsylvania as  
15 possible. His sister is here in the courtroom today  
16 and she would like to have continued contact with him.  
17 So those are our requests of the Court.

18 THE COURT: Thank you very much. Mr.  
19 Torres, would you like to say anything?

20 MR. TORRES: No, Your Honor.

21 THE COURT: Nothing? In this matter, the  
22 defendant, Xavier Torres, was convicted after a jury  
23 trial of conspiracy to possess with intent to  
24 distribute cocaine and the second count of possession,  
25 brandishing and discharging firearms in furtherance of

1 a drug trafficking crime. He's been in custody  
2 approximately 37 months and 10 days. He's 37 years of  
3 age, has no high school degree or GED, is a United  
4 States citizen. This involves a conspiracy that was  
5 conducted between 2015 and January 29 of 2018, a  
6 conspiracy to possess with intent to distribute  
7 cocaine along with other substances and also the use,  
8 possession, brandishing and discharging firearms in  
9 furtherance of a drug trafficking crime.

10 The defendant was previously convicted in  
11 this very court May 13, 2009 of a conspiracy to  
12 possess with intent to distribute heroin. Carlos  
13 Javier Figueroa was the leader of a violent, large  
14 sale, sophisticated drug conspiracy. He ran a drug  
15 trafficking organization in the City of Rochester in  
16 multiple locations. It involved the distribution of  
17 multiple kilos of cocaine and other substances that  
18 arrived from Puerto Rico to the Rochester area.

19 The investigation involved wire taps,  
20 surveillances and cameras in various locations, search  
21 warrants, and the use of confidential informants.  
22 That information indicated that the organization  
23 operated multiple locations throughout the City of  
24 Rochester to package and distribute controlled  
25 substances particularly from the Clinton Burbank area

1 in the City of Rochester.

2 The defendant Xavier Torres as part of that  
3 organization to play a key role in that organization.  
4 He was arrested initially on February 6 of 2016 in the  
5 area of Clinton and Burbank Street where heroin,  
6 cocaine and marijuana were discovered. The defendant  
7 did run from that particular location when confronted  
8 with law enforcement and was ultimately secured.  
9 Heroin and cocaine were found on his person as well.

10 There were multiple controlled lies related  
11 directly to this defendant specifically June 12, 2015,  
12 July 21, 2015, July 30, 2015 in the area of Burbank  
13 Street that involved both heroin and cocaine. As  
14 referred to earlier, Victor Nunez did testify that he  
15 was involved in a homicide in January of 2016 with  
16 Obed Torres Garcia where they killed Luis Garcia in  
17 error when they were supposed to kill his brother.  
18 There was testimony that March 31, 2016 Xavier Torres  
19 killed Caesar Lopez. Mr. Lopez was shot some 11  
20 times.

21 In the testimony to the hearing, Mr. Nunez  
22 indicated that on June 6 of 2016, Mr. Nunez and Mr.  
23 Torres did lure Jonathan Gonzalez, Flacco, another  
24 individual involved in conspiracy to Buffalo, New York  
25 with the intent to kill him, did lure him to that

1 location to an alley way in the City of Buffalo and  
2 shot him some nine times.

3 Another homicide during the course of  
4 conspiracy was September 12, 2016 which the defendant  
5 Cruz Carmona Garcia killed Walter Ross at the corner  
6 of Clinton and Burbank Street again at the direction  
7 of Carlos Javier Figueroa based upon the fact that Mr.  
8 Ross was selling controlled substances in an area that  
9 Carlos Garcia -- or Carlos Figueroa considered to be  
10 his territory. Testimony is that the defendant did  
11 upon arrest give a statement to the law enforcement  
12 admitting that this organization was distributing  
13 approximately a kilo of heroin on a weekly basis.

14 There's also extensive testimony during the  
15 trial of Mr. Xavier Torres regarding his involvement  
16 in this organization. Although it appears he was gone  
17 for some period of time, all the acts that were just  
18 referred to were all in furtherance of the conspiracy  
19 and during the course of the conspiracy, and  
20 therefore, the defendant is responsible for those acts  
21 of the could conspirators.

22 This case involved a number of  
23 co-conspirators including Carlos Javier Figueroa who  
24 was recently sentenced to two life terms plus 25 years  
25 consecutive, Laysha Ponce de Leon who was a mistress

1 of Carlos Figueroa sentenced to 168 months  
2 imprisonment, Roberto Figueroa who testified in the  
3 trial of Carlos Figueroa and is yet to be sentenced,  
4 Jonathan Cruz Carmona who did murder Walter Ross  
5 sentenced to 300 months imprisonment, John Carlos  
6 Pizarro was sentenced to 168 months imprisonment, Obed  
7 Torres Garcia was sentenced to 255 months  
8 imprisonment, Victor Nunez has yet to be sentenced  
9 along with Orlando Yelder.

10 Jose Justamino Rodriguez was sentenced to  
11 one year and one day. Joshua Figueroa to a probation  
12 sentence, Freddy Silva to 57 months and Felix Figueroa  
13 to 96 months. A number of people involved and the  
14 magnitude of those sentences speaks volumes about the  
15 sophistication and the extent of this drug trafficking  
16 organization.

17 Regarding the first count, the conspiracy to  
18 possess with intent to distribute cocaine, the Court  
19 finds that the base offense level should be 43 based  
20 upon the guideline 2D1.1, and based upon if a victim  
21 was killed under circumstances that constitute murder  
22 during in furtherance of conspiracy that that is the  
23 proper guideline range. Based upon the finding of the  
24 Court that the defendant was involved in the homicide  
25 of Jonathan Gonzalez, that is the appropriate base

1 level for this charge. There was no reduction for  
2 accepting responsibility.

3 The defendant has made it clear that he  
4 accepts no responsibility for any of the acts involved  
5 in this conspiracy. His sentencing statement  
6 indicates he maintains he's innocent and challenges  
7 the facts alleged and denies involvement in any of the  
8 homicides, denies even that he made a statement to law  
9 enforcement, although the statement made to law  
10 enforcement appears to be in his interest in that he  
11 made a statement to law enforcement believing that  
12 Carlos Javier Figueroa intended to have him murdered  
13 as well. He disputes the calculation of the base  
14 offense level of the Court as well.

15 The defendant's criminal history category is  
16 a level three. He has a 2001 youthful offender  
17 adjudication of controlled substance 7th degree,  
18 disorderly conduct in 2002, 2002 conviction for  
19 criminal possession of a firearm in the third degree,  
20 again a youthful offender adjudication. The defendant  
21 was sentenced to probation and violated the conditions  
22 of probation. 2004 disorderly conduct, 2006  
23 unauthorized use of a motor vehicle, 2007 attempted  
24 criminal possession of a controlled substance in the  
25 7th degree, 2009 conviction before this Court, the

1 Western District of New York and Buffalo for  
2 conspiracy to possess and intent to distribute heroin.  
3 2010 escape charge for failure to attend a treatment  
4 program. 2015 criminal possession of a controlled  
5 substance 7th degree. 2016 criminal possession  
6 controlled substance 7th degree and 2017 attempted  
7 criminal possession of a controlled substance in the  
8 7th degree.

9 The defendant is 37 years of age, was born  
10 in Puerto Rico. His father had a criminal history as  
11 well. His mother is on social security disability.  
12 It appears his father was an alcoholic and did  
13 physically assault his children including at one point  
14 breaking the arm of the defendant's sister, threw a TV  
15 at her at one point. The defendant's unmarried, has  
16 three children 20, 10 and 8, is in good physical  
17 health.

18 Any mental health issues are related to  
19 depression and stress primarily based upon the charges  
20 that have been placed against him. The defendant's  
21 consumed alcohol since the age of 14, marijuana since  
22 the age of 14, cocaine since the age of 15, heroin at  
23 the age of 34. He attended the 9th grade at Grover  
24 Cleveland High School, dropped out for the streets and  
25 did work at some point for a candy company.



1           Mr. Torres, the Court has to consider a  
2           number of factors determining the appropriate sentence  
3           here including the seriousness of the offense. As I  
4           just went through this articulates of the facts in  
5           this case and the testimony the Court heard this was a  
6           very sophisticated and violent long term organization.  
7           It was callus in its concern for human life. You were  
8           a key component of that conspiracy. You were involved  
9           in those homicides.

10           Your involvement could only be characterized  
11           as violent, brutal and callous. You had a chance to  
12           turn things around back in 2009, some 13 years ago  
13           now, when you were sentenced in this court, but  
14           instead you decided to maintain your involvement in a  
15           sophisticated drug conspiracy. That was your  
16           decision. I don't know what you thought the end game  
17           here was, but as you can see, the end game usually  
18           involves death. Members of the conspiracy being  
19           killed as you believe that Carlos Javier Figueroa at  
20           one point may have intended to have you murdered and  
21           then you got involved in the homicide of other  
22           individuals.

23           You showed absolutely no responsibility for  
24           any of your actions involving drug trafficking or the  
25           violent acts that you carried out. You showed no

1       remorse for your actions whatsoever. You apparently  
2       learned nothing from your prior convictions.

3               Based upon all of that, the Court has  
4       considered the seriousness of the offense and your  
5       background and character, your involvement in a number  
6       of criminal activities, your alleged involvement with  
7       the Latin Kings in the Buffalo area with this drug  
8       conspiracy with a number of homicides. The Court has  
9       to impose a sentence that reflects the seriousness of  
10      those offenses and promotes respect for the law and  
11      deters you and others from engaging in this type of  
12      activity in the future.

13             I agree with Mr. Verrillo, a life sentence  
14      is a very tough sentence; however, you've earned that  
15      sentence by your actions, by your callousness, by your  
16      total inability to accept any responsibility for your  
17      actions. You are much too dangerous to live on the  
18      streets of this community. Therefore, the Court finds  
19      on the first count of conspiracy to possess with  
20      intent to distribute cocaine that the defendant,  
21      Xavier Torres, be sentenced to life imprisonment. On  
22      count two, the charge of possessing, brandishing and  
23      discharging firearms in furtherance of drug  
24      trafficking crime, the Court finds that a sentence of  
25      20 years consecutive to the life term is appropriate.

1           Again, the discharge of firearms in this  
2 case involved a number of homicides as well, and  
3 therefore, that is an appropriate sentence. In the  
4 intent of the Court in imposing such a significant  
5 sentencing consecutive to the life sentence is with  
6 the intent that you never be released from prison.  
7 That's to be followed by a period of ten years of  
8 supervised release on count one and five years  
9 concurrent on count two with a number of conditions  
10 that if you are released that you not violate any  
11 federal, state or local laws, that you prohibit from  
12 possessing firearm, ammunition or dangerous device,  
13 shall not possess a controlled substance unless  
14 prescribed by a physician, must submit to drug testing  
15 based upon the history here of use of controlled  
16 substances illegally.

17           You must cooperate in the collection of a  
18 DNA sample, must participate in a program for  
19 substance abuse including substance abuse testing such  
20 as urinalysis and other testing, undergo a drug and  
21 alcohol evaluation and treatment. If substance abuse  
22 is indicated by the testing, probation will supervisor  
23 the details of the testing and treatment including the  
24 selection of the treatment, provider and the schedule.

25           If inpatient is recommended, it must be

1 approved by the Court unless the defendant consents.  
2 He's not to leave treatment until completion or as  
3 ordered by the Court. While in treatment and after  
4 discharge from treatment he is to abstain from the use  
5 of alcohol and must contribute to the cost of services  
6 rendered. Shall submit to a search of his person,  
7 property, vehicle and residence upon reasonable  
8 suspicion and permit confiscation of any evidence or  
9 contraband discovered. Shall notify probation of any  
10 opiate based pain medication prescribed before the  
11 prescription is filled, shall provide probation with  
12 access to any request of personal or business  
13 financial information. Probation is authorized to  
14 release presentence and post sentence financial  
15 information submitted by the defendant to the United  
16 States Attorney's Office for the collection of any  
17 unpaid financial obligations including fines,  
18 assessments for restitution. I don't believe there's  
19 any request for restitution; is that correct.

20 MR. MARANGOLA: Correct, Your Honor.

21 THE COURT: Okay. The Court does impose a  
22 fine of \$2,500 on count one. Any interest on the fine  
23 is waived. While incarcerated, if the defendant is  
24 non UNICOR or UNICOR grade five, shall pay  
25 installments of \$25 per quarter. If it's not agreed

1 to one through four in UNICOR, shall pay installments  
2 of 50% of his monthly pay as an inmate. While on  
3 supervision, shall make monthly payments at the rate  
4 of 10% of his monthly gross income. The defendant  
5 shall pay a special assessment of \$100 on each of the  
6 counts, one and two, for a total of \$200 shall be due  
7 immediately and can be made to the Bureau of Prisons  
8 financial responsibility program.

9 The Court will recommend the defendant serve  
10 in a facility close to Lancaster, Pennsylvania should  
11 he have the availability of his family and also that  
12 if there's any drug treatment programs available while  
13 he's in custody to be able to participate in those  
14 programs. Anything further from probation?

15 MS. FISH: Judge, just to clarify, does the  
16 Court wish to order the statutory language under  
17 18USC3664N.

18 THE COURT: Yes. That is specifically if  
19 the defendant -- well, there's no restitution. There  
20 is a fine. Based upon the fact the defendant is  
21 obligated to pay a fine, if he receives resources from  
22 any source including inheritances, settlement,  
23 insurance, lawsuits or other judgments during a period  
24 of incarceration shall be required to apply the value  
25 of such resources to any outstanding restitution or

1 fine. In addition, the defendant shall forfeit his  
2 interest in one Ruger pistol, serial number 33213800.  
3 Anything further from probation?

4 MS. FISH: No, Judge. Thank you.

5 THE COURT: Are there any counts to be  
6 dismissed, Mr. Marangola?

7 MR. MARANGOLA: No, Your Honor.

8 THE COURT: Anything further from the  
9 government?

10 MR. MARANGOLA: No, thank you.

11 THE COURT: Mr. Verrillo?

12 MR. VERRILLO: No, Judge.

13 THE COURT: Mr. Torres, I do notify you of  
14 your right to appeal in this case, and your attorney  
15 has filed numerous motions, proceedings and objections  
16 to the sentencing. All of those obviously preserve  
17 your right to any of those issues upon appeal as I  
18 notify you of that and to stay in contact with your  
19 attorney regarding a finding or a notice of appeal if  
20 that is your request. Thank you.

21 MR. MARANGOLA: Thank you, Your Honor.

22 (Proceeding concluded at 10:59 a.m.)  
23  
24  
25

**CERTIFICATE OF COURT REPORTER**

I certify that this is a true and accurate  
record of proceedings in the United States District  
Court for the Western District of New York before the  
Honorable Frank P. Geraci Jr., on May 19, 2022.

S/ Brandi A. Wilkins

Brandi A. Wilkins

Official Court Reporter